

JUDGE SILVER'S CIVIL TRIAL CONDUCT AND DECORUM

The purpose of this protocol is to emphasize, not to supplant, certain portions of the ethical principles applicable to the lawyer's conduct in the courtroom and to preserve the dignity of the courtroom environs and the judicial process. They also are intended to further efficient and orderly fact-finding. It behooves all of us working in this system to attain these goals and it is hoped the following is received in that spirit.

Your compliance with the following requests is expected and will be appreciated:

1. Be on time for each court session. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have a friend handle them for you.

2. Give the courtroom deputy and judge (at the pretrial session before the trial begins) the caption of the case, and the names and addresses of all persons at counsel table and all witnesses to be called.

3. Please stand and do not pace whenever you address the judge, jury or witnesses.

4. Stand at the podium at all times when addressing witnesses. Except upon express permission of the Court, all communications to the Court shall be made from a position beside the counsel table or from the podium. Counsel shall not approach opposing counsel, the bench, a witness, the court reporter's table or the clerk's desk, or otherwise move from the counsel table or podium without the permission of the Court.

5. In an opening statement to a jury, do not appeal to emotion or prejudice. Confine yourself to a concise summary of the important facts that you expect to prove, or your position of the facts that the opposition has undertaken to prove.

6. Exhibits

(a) Court time may not be used for marking exhibits. This must be done in advance of the court session. Before trial, counsel should meet and agree upon a joint exhibit list and discuss and attempt to resolve any objections. Counsel must discuss what foundation is required for any particular document or piece of evidence or whether they are stipulating to the admissibility of a document or other evidence without a witness.

(b) Have a copy of all exhibits for the judge at the commencement of the trial.

(c) Counsel shall make prearrangement with the clerk for the use of chalkboards, view boxes, tripods, video recorders, overheads, or other visual aids sufficiently in advance of the need so that they may be set up while the court is not in session.

(d) Diagrams, charts, drawings and other demonstrative or visual evidence shall, whenever practicable, be prepared by witnesses before testifying. Effort should be made to avoid using time during the presentation of evidence for these purposes.

(e) All exhibits shall be shown to, and examined by, opposing counsel prior to their being offered.

(f) Hand all papers intended for the Court or witness to the clerk or bailiff, who, in turn, will pass them to the Judge or witness.

(g) Do not offer depositions wholesale; offer only relevant, redacted portions of the transcript and always in accordance with Rule 32 of the Federal Rules of Civil Procedure. Plaintiff will highlight in yellow those portions it wishes to offer. The Defense will highlight in blue those portions it wishes to offer.

(h) If you intend to question a witness about a group of documents, make an attempt to have all of the documents in front of the witness when you start the examination.

7. Witnesses

(a) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections, if any, during direct examination shall be the attorney recognized for cross-examination.

(b) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and not by their first or given names.

(c) In examining a witness, generally counsel shall not repeat or echo the previous testimony or answers given by a witness.

(d) The examination and cross-examination of each witness shall be limited to questions addressed to the witness. Counsel shall refrain from making statements, comments or remarks prior to asking a question or after a question has been answered.

(e) Do not greet or introduce yourself to adverse witnesses. Commence your cross-examination without preliminaries.

(f) Counsel shall admonish all persons at counsel table that gestures, facial expressions, audible comments, or the like, as

manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

8. Objections are to be limited to stating "objection," and setting forth the basis for the objection (e.g., "leading" or "hearsay") and/or the number of the Federal Rules of Evidence relied upon (e.g., "Objection: Rule 403"). Do not state or argue the grounds for objections in the presence of the jury unless asked to by the Judge. The Court may permit a side bar conference.

9. Address all remarks to the judge, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses.

10. Gum chewing, reading of newspapers or magazines (except as a part of the evidence in a case), are not permitted while court is in session. Similarly, beepers, cellular telephones and other electronic equipment which make noise are prohibited in the courtroom without prior permission of the Court.

11. Counsel should try to anticipate problems which will arise during the trial, and take them up with the Court and opposing counsel out of the presence of the jury. Appropriate motions in limine in advance of trial are encouraged. If during trial it becomes necessary for an attorney to confer with the Court at the bench, the Court's permission should be obtained.

12. Counsel shall not make motions (e.g., a motion for a mistrial) in the presence of the jury. Such matters may be raised at the first recess.

13. Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury.

14. Professionalism and civility are not aspirational but mandatory in this courtroom.